***THE HON'BLE Ms. JUSTICE G. ROHINI**

+ WRIT PETITION NO.21556 OF 2004

% 27/04/2006

 # Jonnakuti Mokshanandam … Petitioner

Vs.

$ 1. The State of A.P., rep. by its Secretary of
Government, Legislative Affairs and Justice,
Law (LA & J Courts-A), Secretariat,
Hyderabad and 5 others. … Respondents

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> Head Note:

! Counsel for the petitioner : Sri Unnam Muralidhara Rao

^ Counsel for the respondents : Govt. Pleader for Home

Govt. Pleader for Social Welfare

Cases referred :

- NIL -

THE HON'BLE Ms. JUSTICE G.ROHINI

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Writ Petition No.21556 of 2004

Dated: 27th April, 2006.

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Between:

Jonnakuti Mokshanandam … Petitioner

And

1. The State of A.P., rep. by its Secretary of Government, Legislative Affairs and Justice, Law (LA & J Courts-A), Secretariat, Hyderabad and 5 others. … Respondents

THE HON'BLE Ms. JUSTICE G.ROHINI

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Writ Petition No.21556 of 2004

ORDER:

The writ petitioner who is a practising advocate in the District Courts at Ongole filed this writ petition seeking a declaration that the action of the respondents 1 to 4 in appointing the respondent No.5 as Special Public Prosecutor in the Special Court for trial of cases under The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 as arbitrary, illegal and violative of Section 24 (8) of the Criminal Procedure Code.

The facts, in brief, are as under :

Under G.O.Ms.No.35, dated 21.04.1999, the Government appointed a retired Judge of this Court as Single Member Commission of enquiry to enquire into the practice of untouchability and atrocities against the scheduled castes and scheduled tribes and suggest measures for eradication of untouchability and prevention of atrocities. One of the recommendations made by the said Committee was for preparation of District Panel of Public Prosecutors with eminent senior advocates, who have been in practice for not less than 10 years, in consultation with the Director of Prosecutions and consider to include the retired District Judges and retired Sub-Judges. The said recommendation was accepted by the Cabinet and in terms thereof, G.O.Ms.No.92, dated 03.10.2001, was issued directing the Departments concerned to issue separate comprehensive Government orders on each of the recommendations made by the Committee. So far as the above recommendations are concerned, the Social Welfare Department was directed to issue separate orders and consequently G.O.Ms.No.110, dated 31.10.2001, was issued with certain instructions to the District Collectors and Magistrates to prepare for each district a panel of such number of eminent senior advocates who have been in practice for not less than 10 years for conducting cases in the Special Courts. Simultaneously, the Director of Prosecutions was also directed to prepare a panel of such number of Public Prosecutors for conducting cases in the Special Courts. The said two panels should include the retired Judges and retired Sub-Judges and also advocates of 10 years standing belonging to Scheduled Castes and Scheduled Tribes.

In pursuance thereof, by proceedings dated 14-6-2002, the District & Sessions Judge, Prakasam District, Ongole had communicated the panel of advocates belonging to Scheduled Caste

consisting of the names of the writ petitioner and the 6th respondent herein to the District Collector & Magistrate, Prakasam district, Ongole. In turn, the District Collector & Magistrate, by letter dated 11-11-2002 forwarded the same to the Commissioner of Social Welfare of A.P., Hyderabad to take further action. A copy of the said proceedings was also sent to the Director of Prosecutions, Hyderabad. It appears that the Director of Prosecutions, A.P., Hyderabad, approved the said two names by letter dated 11-2-2004 and consequently the District Collector & Magistrate, Ongole – the 4th respondent herein by proceedings dated 14-3-2004 appointed the petitioner and the 6th respondent as Special Public Prosecutors for conducting cases in Special Courts for trail of SCs/STs Atrocity Cases with immediate effect.

The petitioner states that though the said order of appointment was served on them, even before the work was allotted, the 1st respondent issued the impugned G.O.Rt.No.769, dated 28-4-2004 appointing the 5th respondent herein as Special Public Prosecutor for the Special Court for trial of cases under The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ongole.

The petitioner contends that since he was appointed duly following the procedure as contemplated under Section 24(8) of Criminal Procedure Code, 1973 (for short 'Cr.P.C.') and also in terms of G.O.Ms.No.110, dated 31.10.2001; G.O.Ms.No.92, dated 03.10.2001 and G.O.Ms.No.187, dated 06.12.2000, and since the said appointment was also in tune with the policy of the Government, the 1st respondent was not justified in issuing a fresh appointment order in favour of the fifth respondent simultaneously. It is also contended that the said action of the 1st respondent is arbitrary and illegal, apart from being without jurisdiction.

The fourth respondent-District Collector, Ongole filed a counter affidavit stating that on the basis of the panel sent by the Principal District Sessions Judge, Ongole, which also include the name of the petitioner, the appointments were made.

The second respondent-Director of Prosecutions, filed a separate counter affidavit stating that though it is true that he approved the panel for appointment of Special Public Prosecutors for the cases filed in the Special Court under the Act vide proceedings, dated 11.02.2004, the District Collector without receiving any communication from the Commissioner of Social Welfare has appointed the writ petitioner and another advocate as Special Public Prosecutors which is contrary to the law and procedure. Since the District Collector, Ongole cannot appoint as Special Public Prosecutors and since the Government is the sole authority to make such appointments, the second respondent issued a message, dated 01.04.2004, to the District Collector marking a copy to the Commissioner of Social Welfare for cancellation of the order, dated 14.03.2004. Apart from that, a detailed letter, dated 06.04.2004, was also addressed to the Commissioner of Social Welfare stating that the panel prepared by the District Collector, Ongole in consultation with the Director of Prosecution is required to be notified by the Government in the Official Gazette under Rule 4 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short 'the Rules') and that the appointment of the petitioner as Special Public Prosecutor by the District Collector is not valid since it was neither approved by the Government nor notified in the Official Gazette. Subsequently, the Government appointed the fifth respondent, a Cadre Prosecutor, as Special Public Prosecutor of the Special Court under the Act vide G.O.Rt.No.769, dated 28.04.2004, in consonance with the orders issued in G.O.Ms.No.125, dated 07.12.2002, and G.O.Rt.No.37, dated 20.01.2003, wherein the Government decided to appoint only the Cadre Prosecutors in the Special Courts. It is also stated that as per Section 15 of the Act for every Special Court, the State Government shall by notification in the

Official Gazette specify a Public Prosecutor or appoint an advocate who has been in practice for the purpose of conducting cases in the Special Courts. Therefore, the Government has rightly appointed the fifth respondent to the Special Court under the Act at Ongole. It is pleaded that the order, dated 14.03.2004, passed by the District Collector wherein the petitioner was appointed as a Special Public Prosecutor was invalid and the petitioner has no ground to challenge the order of appointment of the fifth respondent, dated 28.04.2004.

I have heard the learned Counsel for both the parties in detail.

Section 24 of Cr.P.C., deals with appointment of Public Prosecutors. As per Sub-section (3) of Section 24 of Cr.P.C., the State Government shall appoint a Public Prosecutor for every District and may also appoint one or more Additional Public Prosecutors for the District. Sub-section (4) of Section 24 of Cr.P.C., makes it clear that the District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the District. Sub-section (5) of Section 24 Cr.P.C. makes it further clear that no person shall be appointed by the State Government as the Public Prosecutor unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4) of Section 24 of Cr.P.C. On a combined reading of Sub-sections (3), (4) & (5) of Section 24 of Cr.P.C., it is clear that the State Government is the appointing authority, however, the appointment has to be made on the basis of panel of names of persons sent by the District Magistrate in consultation with the Sessions Judge. Sub-section (6) of Section 24 of Cr.P.C., provides for an exception which states that where in a State, a regular Cadre of Prosecuting Officers exists, the State Government shall appoint a Public Prosecutor only from among the persons constituting such Cadre. However, if the State Government is of the opinion that no suitable person is available in such cadre, then a person from the panel of names prepared by the District Magistrate may be appointed by the

Government as Public Prosecutor.

There can be no dispute that the scheme noted above applies to the appointment of Public Prosecutors and Additional Public Prosecutors for the District.

It is also relevant to note that the Government of Andhra Pradesh issued certain instructions to regulate the appointment and conditions of services of law Officers of the Government under G.O.Ms.No.187, dated 06.12.2000. The said instructions are known as A.P. Law Officers (Appointment and Conditions of Service) Instructions, 2000 (for short 'the Instructions'). Section 2(iv) of the Instructions, which define law officer, includes Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor. Section 3 of the Instructions states that the Government is the appointing authority for appointment of law officers on behalf of the State Government to conduct cases before various Courts and try them. From Section 5 of the Instructions, it is clear that all appointments of law officers in all the Courts and Tribunals subordinate to the High Court shall be made on the basis of the recommendations of the District Collector concerned who shall ascertain the view of the District and Sessions Judge concerned before making the recommendations. Section 6 of the Instructions also states that so far as appointment of Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors is concerned, the same shall be as per the provisions of Section 24 of Cr.P.C.

It also relevant to note that The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which was enacted with an object to prevent commission of offences of atrocities against the members of the Scheduled Castes and Scheduled

Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith, contains a special provision for appointment of Public Prosecutors for every such Special Court. Section 14 of the Act provides that for the purpose of providing speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under the Act. Section 15 of the Act further provides that for every such Special Court, the State Government shall, by notification in the Official Gazette, specify a public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Sections 14 & 15 of the Act run as under :

> *"**14. Special Court** :- For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.*
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> ***15. Special Public Prosecutor** :- For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an Advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court."*

From the above provisions, it is clear that even for the purpose of appointment of Special Public Prosecutors for conducting cases in the Special Courts constituted under the Act, the State Government is the competent authority, however such appointment shall be made by notification in the Official Gazette. So far as the procedure to be

followed for appointment of the Special Public Prosecutors is concerned, it is pertinent to note Sub-rule (1) of Rule 4 of the Rules provides as under:

> "**4.Supervision of Prosecution and Submission of Report**:- (1) The State Government on the recommendation of the District Magistrate shall prepare for each District a panel of such number of eminent senior advocates who have been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special Courts. Similarly, in consultation with the Director of Prosecutions, officer-in-charge of the prosecution, a panel of such number of Public Prosecutors as it may deem necessary for conducting cases in the Special Courts, shall also be specified. Both these panels shall be notified in the Official Gazette of the State and shall remain in force for a period of three years."

From a reading of Rule 4 of the Rules, it is clear that the panel of the advocates for conducting cases in the Special Courts shall be notified in the Official Gazette of the State.

In the case on hand, the specific case of the respondents is that since the panel consisting of the names of the petitioner and the sixth respondent was not notified in the Official Gazette as required under Rule 4 of the Rules, the District Collector was required to prepare another panel in consultation with the Director of Prosecutions. Accordingly, a new panel was sent and on the basis of the same, the fifth respondent was appointed as Special Public Prosecutor for the Special Court under the Act at Ongole vide G.O.Rt.No.769, dated 28.04.2004, which is under challenge in this writ petition.

A perusal of the impugned G.O.Rt.No.769, dated 28.04.2004, shows that in exercise of powers under Section 15 of the Act, the fifth respondent, who is the Additional Public Prosecutor Grade-II at Guntur on promotion as Additional Public Prosecutor Grade-I, was appointed as Special Public Prosecutor in the Special Court under the Act at Ongole. Several other Additional Public Prosecutors

Grade-II apart from the petitioner were posted in different Courts in the existing vacancies on promotion as Additional Public Prosecutors Grade-I.

The learned Government Pleader appearing for the respondents 1 to 4 while placing reliance upon Sub-section (6) of Section 24 of Cr.P.C., which provides that notwithstanding anything contained in sub-section (5), where in a State there exists regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor only from among the persons constituting such Cadre submits that the appointment of the 5th respondent on promotion as Additional Public Prosecutor Grade-I was in accordance with law and he was rightly posted as Special Public Prosecutor for Special Court for trial of cases under The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ongole in the existing vacancy.

It is true that under Sub-section (6) of Section 24 of Cr.P.C., the State Government is empowered to appoint a Public Prosecutor from among the persons constituting a regular cadre of prosecuting officers. However, The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is a special enactment enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes & Scheduled Tribes and Section 14 provides for establishment of Special Courts for the purpose of providing for speedy trial. Section 15 of the Act further provides that for every Special Court, the State Government shall specify a Public Prosecutor as a Special Public Prosecutor for the purpose of conducting cases in that Court by notification in the Official Gazette. In the alternative, an advocate who has been in practice as an advocate for not less than 7 years may also be appointed as a Special Public Prosecutor for the said purpose. For the said purpose, under Rule 4, the State Government, on the recommendation of the

District Magistrate, has to prepare a panel of eminent senior advocates who have been in practice for not less than seven (7) years for conducting cases in the Special Courts. Rule 4 also provides for a specification of a panel of Public Prosecutors to be prepared by the State Government in consultation with the Director of Prosecutions. Both the abovesaid panels shall be notified in the Official Gazette of the State and shall remain in force for a period of 3 years.

Section 20 of the Act provides that the provisions of the Act shall override other laws for the time being in force.

Thus, it is clear that so far as the Special Courts established under the Act are concerned, the procedure prescribed under the Act and the Rules shall govern the appointment of the Special Public Prosecutor.

In the case on hand, admittedly the appointment of the petitioner by order dated 14-3-2004 was not made by the Government. That apart, the procedure followed was not in accordance with Section 15 of the Act read with Rule 4 of the Rules. Obviously, it was only in terms of the scheme formulated on the basis of the recommendations made by the commission of enquiry constituted under G.O.Ms.No.35, dated 21-4-1999.

It is also clear that G.O.Ms.No.110, dated 31-10-2001, G.O.Ms.No.92, dated 3-10-2001 and G.O.Ms.No.187, dated 6-12-2000 did not deal with the procedure for appointment of Special Public Prosecutor. The said Government Orders were issued only in implementation of the recommendations made by the commission of enquiry constituted under G.O.Ms.No.35, dated 21-04-1999 for preparation of a panel of eminent senior advocates for conducting

cases in the Special Courts constituted under The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. They have no statutory force and cannot override the procedure prescribed either under Section 24 of Cr.P.C. for appointment of Public Prosecutors and Assistant Public Prosecutors for the districts in general much less the procedure prescribed under the Act which specifically provided for appointment of Special Public Prosecutors for the Special Courts constituted under the Act. As a matter of fact, G.O.Ms.No.110, dated 31-10-2001 provides only for preparation of panels, but not with subsequent steps to be taken in terms of the provisions of the Act.

Hence, the appointment of the petitioner which was not in accordance with law was rightly not acted upon by the respondents.

So far as the appointment of 5th respondent under the impugned G.O.Rt.No.769, dated 28-4-2004 is concerned, the Director of Prosecutions in the counter-affidavit explained that in terms of Section 15 of the Act read with Rule 4 of the Rules, Government issued G.O.Ms.No.125, Social welfare (POA-I) Department, dated 7-12-2002 and G.O.Rt.No.37, Social Welfare (POA-I) Department, dated 20-1-2003 deciding to appoint only Cadre Prosecutors in the Special Courts. Accordingly, following the said procedure, the 5th respondent who is a Cadre Prosecutor and was due for promotion was considered and appointed as Special Public Prosecutor following due process of law. It is also not in dispute that the said appointment was made by publication in the Official Gazette.

In the circumstances, the appointment of the 5th respondent cannot be held to be illegal or erroneous. From the material on record, it is clear that the same was in accordance with the procedure prescribed under the Act and the Rules made thereunder.

For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly dismissed. No costs.

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G. ROHINI, J.

Dt. 27-4-2006

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